

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBERT D. CUNNINGHAM JR.,)
)
 Plaintiff,)
)
 v.) Civil Action No. 99-460-SLR
)
RICHARD W. RILEY,)
Secretary, U.S. Department)
of Education,)
)
 Defendant.)

Robert D. Cunningham, Dover, Delaware. Plaintiff, pro se.

Colm F. Connolly, Esquire, United States Attorney, Patricia C. Hannigan, Assistant United States Attorney, United States Attorney's Office, Wilmington, Delaware. Counsel for Defendant.

MEMORANDUM OPINION

Dated: June 12, 2003
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Robert D. Cunningham filed this action on July 20, 1999 against defendant Richard W. Riley, Secretary, U.S. Department of Education. (D.I. 1, 2) Plaintiff alleges defendant violated his due process rights under the Fifth Amendment of the Constitution by failing to investigate a complaint filed with the United States Department of Education's Office of Civil Rights ("OCR") against the Delaware Division of Public Health ("DDPH"). The court has jurisdiction over plaintiff's claims pursuant to 28 U.S.C. § 1331. Currently before the court is plaintiff's motion for relief from judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure. (D.I. 43) For the following reasons, plaintiff's motion is denied.

II. Background

Plaintiff, Robert D. Cunningham, Jr., filed an action with this court against DDPH in 1996, titled Cunningham v. Nazario, et al., claiming defendants violated 42 U.S.C. § 1983 and § 504 of the Rehabilitation Act, 29 U.S.C. §794.¹ (D.I. 41 at 2) The claim was dismissed on the grounds that the statute of limitations had expired, plaintiff lacked standing, and plaintiff

¹ The circumstances leading up to plaintiff's allegations against DDPH are complex, but for the purposes of plaintiff's current motion before the court, it is not necessary to describe the circumstances in any detail.

failed to state a claim. (Id.) The U.S. Court of Appeals for the Third Circuit affirmed this court's judgment and the Supreme Court denied plaintiff's petition for a writ of certiorari.

(Id.)

After exhausting judicial avenues for relief, plaintiff pursued an administrative complaint with OCR. (D.I. 23 at 3) OCR informed plaintiff that it did not have jurisdiction to consider his allegations. (Id.) As a result, plaintiff filed suit against defendant alleging OCR mishandled his complaint against DDPH, thereby, violating plaintiff's Fifth Amendment due process rights. (D.I. 1) Defendant filed a motion to dismiss arguing, inter alia, plaintiff failed to state a claim upon which relief could be granted. (D.I. 15; D.I. 16) After reviewing both parties' briefs, this court granted defendant's motion to dismiss. (D.I. 24)

In the memorandum opinion supporting the grant of defendant's motion to dismiss, the court relied on *Hannah v. Larche*, 363 U.S. 420 (1960) and *Jenkins v. McKeithen*, 395 U.S. 411 (1969) to determine plaintiff was not entitled to due process rights in the context of the OCR investigation. (D.I. 23 at 8) The court held plaintiff was not entitled to due process protections unless the agency at issue went beyond performing an investigatory function, to adjudicate issues which affect individual legal rights. (Id.)

OCR merely processed the complaint pursuant to federal regulations, an investigative as opposed to an adjudicative function....In the absence of the exercise of adjudicatory power, i.e., when only the investigative powers of an agency are utilized, due process considerations do not attach.

(Id.)

Plaintiff appealed and the Third Circuit affirmed. (D.I. 40) Plaintiff's appeal claimed the motion to dismiss was in conflict with the earlier decision in Nazario. (D.I. 41 at 4) Plaintiff argued this court contradicted itself because in Nazario the court determined Cunningham lacked standing, but in the current case the court noted plaintiff's rights were not affected because he was free to file suit against DDPH at any time. (Id.) The Third Circuit held the two decisions were not inconsistent because OCR's actions did not affect plaintiff's ability to sue DDPH, therefore, the two judgments were not mutually exclusive. (Id. at 5) Plaintiff petitioned to the Supreme Court for a writ of certiorari, but the petition was denied. (D.I. 44 at A-22)

III. STANDARD OF REVIEW

Rule 60(b) of the Federal Rules of Civil Procedure provides, in relevant part:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to

move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, or for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation.

Fed. R. Civ. P. 60(b). A motion filed pursuant to Rule 60(b) is “addressed to the sound discretion of the trial court guided by accepted legal principles applied in light of all the relevant circumstances.” *Ross v. Meagan*, 638 F.2d 646, 648 (3d Cir. 1981) (quoting 7 James Wm. Moore et al., *Moore’s Federal Practice*, ¶60.42, at 903 (2d ed. 1979)).

Rule 60(b), however, “does not confer upon the district courts a ‘standardless residual of discretionary power to set aside judgments.’” *Moolenaar v. Government of the Virgin Islands*, 822 F.2d 1342, 1346 (3d Cir. 1987) (quoting *Martinez-McBean v. Government of the Virgin Islands*, 562 F.2d 908, 911 (3d Cir. 1977)). Rather, relief under Rule 60(b) is available only where the “overriding interest in the finality and repose of judgments may properly be overcome.” *Harris v. Martin*, 834 F.2d 361, 364 (3d Cir. 1987) (quoting *Martinez-McBean*, 562 F.2d at 913); see *Moolenaar*, 822 F.2d at 1346. “The remedy provided by

Rule 60(b) is 'extraordinary, and special circumstances must justify granting relief under it.'" Moolenaar, 822 F.2d at 1346 (quoting Page v. Schweiker, 786 F.2d 150, 158 (3d Cir. 1986)). As explained by the Third Circuit, "Rule [60(b)] must be applied '[s]ubject to the propositions that the finality of judgments is a sound principle that should not lightly be cast aside, [and] that clause (6) is not a substitute for appeal...' It is intended to be a means for accomplishing justice in extraordinary situations; and so confined, does not violate the principle of the finality of judgments." Kock v. Government of the Virgin Islands, 811 F.2d 240, 246 (3d Cir. 1987) (internal citations omitted).

IV. DISCUSSION

Plaintiff filed a motion for relief from judgment, pursuant to Federal Rules of Civil Procedure Rule 60. (D.I. 43) The motion claimed plaintiff was entitled to relief from the final judgment because the court erred by only considering plaintiff's procedural due process rights when granting defendant's motion to dismiss. (Id. at 1) Plaintiff argues that since he did not specify in his original complaint what rights under the Fifth Amendment's due process clause² were violated by OCR, the court

² Plaintiff claims the term "due process" in the original complaint should have been interpreted by the court to include rights under procedural due process, substantive due process and equal protection. (D.I. 43 at 1)

had an affirmative duty to evaluate his allegations under all three components of the Fifth Amendment, not just under procedural due process. (Id.) Plaintiff claims that because this court only considered procedural due process, the court did not fulfill its obligations to fully evaluate all allegations against OCR before granting defendant's motion to dismiss, therefore, he is entitled to relief from judgment under Rule 60. (Id. at 2)

Plaintiff argues he is entitled to relief from judgment under Rule 60(b), clauses (1) and (6), but that subsection (6) is more likely to provide him with relief. (D.I. 43 at 37) The analysis of plaintiff's motion under Rule 60(b)(1) and (b)(6) must be done independently because they are distinct. Rule 60(b)(1) requires the motion be made no more than one year after the judgment. Fed. R. Civ. P. 60(b). However, under Rule 60(b)(6) no time limit for filing the motion is imposed. Id. As a result, the Supreme Court has held that clauses (1) through (5) of Rule 60(b) are mutually exclusive from clause (6). *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 864 (1988).

A. Motion for Relief from Judgment under Rule 60(b)(1)

Analyzing plaintiff's motion under Rule 60(b)(1), plaintiff has failed to show grounds upon which relief from judgment should be granted. It can be inferred from plaintiff's motion that he is seeking relief on the grounds that this court made a legal

mistake by failing to evaluate his claims against defendant under Fifth Amendment substantive due process and equal protection. However, a legal error made by the court is not properly brought under a Rule 60 motion. Although the circuit courts are split on whether relief from judgment can be granted under Rule 60(b)(1) when the court has made a legal error, See 12 James Wm. Moore et al., Moore's Federal Practice, ¶60.41, (3d ed. 1999), the Third Circuit has maintained that "a legal error, without more cannot justify granting a Rule 60(b) motion." Smith v. Evans, 853 F.2d 155, 158 (3d Cir. 1988).

Furthermore, Rule 60(b)(1) motions are not to be used by the moving party as a substitution for an appeal. Smith, 853 F.2d at 158. "The correction of legal errors committed by the district courts is the function of the Court of Appeals." Martinez-McBean v. Government of Virgin Islands, 562 F.2d 908, 912 (3d Cir. 1977).

Since plaintiff's motion for relief from judgment under Rule 60(b)(1) is based solely on his claim that the district court committed a legal error by only analyzing his procedural due process rights in the OCR investigation, relief from judgment is denied. The allegation that this court had a duty to evaluate whether plaintiff had a claim against defendant based on Fifth

Amendment substantive due process and equal protection grounds³ would have been properly brought by plaintiff on appeal to the Third Circuit, which he failed to do. As a result, plaintiff is not entitled to relief from judgment under Rule 60(b)(1).

B. Motion for Relief from Judgment under Rule 60(b)(6)

Plaintiff has also failed to provide a basis for his motion for relief from judgment under Rule 60(b)(6). As under Rule 60(b)(1), legal error, without more, does not justify relief under 60(b)(6). Martinez-McBean, 562 F.2d at 912. The precedent for motions under Rule 60(b)(6) based on a court's legal error points even more strongly towards denying plaintiff's motion. The Third Circuit in Martinez-McBean noted they were unaware of any authority that granted Rule 60(b)(6) relief for legal errors. Id. at 912. Consequently, as was the case under Rule 60(b)(1), plaintiff has failed to provide grounds upon which relief under Rule 60(b)(6) can be granted. The claim that plaintiff's suit should have been analyzed under Fifth Amendment substantive due process and equal protection, as well as procedural due process, should have been raised on appeal from this court's judgment, therefore, he is not entitled to relief from the judgment under Rule 60(b)(6).

³ Whether plaintiff's suit against defendant would have withstood defendant's motion to dismiss had the court evaluated the claim under Fifth Amendment substantive due process and equal protection is irrelevant to the current motion.

V. CONCLUSION

For the reasons stated, plaintiff's motion for relief from judgment pursuant to Federal Rules of Civil Procedure Rule 60 is denied. An appropriate order shall issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBERT D. CUNNINGHAM JR.,)
)
 Plaintiff,)
)
 v.) Civil Action No. 99-460-SLR
)
RICHARD W. RILEY,)
Secretary, U.S. Department)
of Education)
)
 Defendants.)

O R D E R

At Wilmington this 12th day of June, 2003, consistent with
the memorandum opinion issued this same day;

IT IS ORDERED that plaintiff's motion for relief from
judgment pursuant to Federal Rules of Civil Procedure Rule 60
(D.I. 43) is denied.

Sue L. Robinson
United States District Judge